

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 636 OF 2005

Mukesh B. Patel .. Appellant

Vs.

Mr. Rajindersing Bhatia .. Respondents
and ors.

Mr. M.S. Menon with Mr. Vipin Mishra for appellant.
Ms. Minal N. Doshi for Respondents.

CORAM: B.H. MARLAPALLE, J.

Date : July 07, 2005.

P.C.:

1. Heard Mr. Menon with Mr. Mishra the learned counsel for the appellant-plaintiff and Ms. Doshi the learned counsel for the respondents-defendants.

2. Suit No.3723 of 2003 was filed by the appellant for a declaration that he is entitled to use and occupy the suit premises i.e. the commercial premises known as 189-A at Sir M.V. Road, Service Lane of Western Express Highway, Andheri (East), consisting of ground plus mezzanine floor having an area of 1700 sq.ft. In addition, the plaintiff had

prayed for permanent injunction against the defendants or their servants, agents etc. After recording evidence the plaintiff filed an application on 8th April, 2005 for withdrawal of the suit and the said application came to be allowed by disposing off the suit as withdrawn. However, the possession of the plaintiff in respect of the suit premises, as an agent of the Court Receiver appointed by an order dated 7/8/2003 was not continued with the plaintiff and he was directed to hand over the possession to the Court Receiver in the first instance and thereafter it has been directed to hand over the suit premises to the defendants by the Court Receiver. The second part of the order dated 6/5/2005 which has been impugned in this appeal is the subject matter of the plaintiff's grievance in this appeal.

3. Mr.Menon the learned counsel for the plaintiff by referring to the order dated 7/8/2003 passed by the trial court submitted that there was a clear finding recorded by the trial court that the plaintiff was in possession when the Court Receiver was appointed and, therefore, the trial court failed in error in

directing the Receiver to take possession of the suit premises from him and in turn to hand over to the defendants. It was further contended that the defendants were never in possession of the suit premises after the utility agreement dated 2/3/2003 was signed between the parties. It was further pointed out that the orders passed by the trial court in Notices of Motion Nos.2625/03, 3070/03 and 3924/03 came to be challenged in A.O. No.902/03, 905/03 and 949/03. The said appeals were disposed off by confirming the order for appointment of the Court Receiver and the said order passed by this Court was challenged in SLP (Civil) Nos.3148-3150/2004 which were dismissed by the Apex Court on 4/10/2004. It was, therefore, urged that the finding that the plaintiff was in possession of the suit premises as on the date the Court Receiver was appointed was accepted by the trial court as well and, therefore, it was not permissible for the trial court to direct the Court Receiver to take over the possession of the suit premises from the plaintiff and in turn hand it over to the defendants.

4. At the outset it must be stated that though the trial court has recorded oral evidence, the plaintiff cannot rely upon the same as the suit has been disposed as withdrawn on the application made by the plaintiff himself. Having allowed the application for withdrawal of suit, the next question that was required to be considered by the trial court was regarding the possession of the suit premises and for the same the relevant date was not on which the Court Receiver was appointed but the date on which the suit was filed. The trial court accepted the defendants' contentions that the plaintiff was not in possession of the suit premises as on 10th July 2003 when the suit was filed or on 11th July 2003 when the court had passed ad-interim order.

5. The ex-parte ad-interim order passed on 11/7/2003 at the instance of the plaintiff reads as under :-

"Motion be registered. The deft. is restrained from disturbing the plaintiff's

possession till next date. S.S. allowed. Returnable on 31.7.2003. the plff. to argue on the office objection also on the next date."

5A. The ad-interim order was served on the defendants on 16/7/2003 and they appeared before the Court on 23/7/2003 along with an affidavit in reply to the Notice of Motion i.e. Notice of Motion No.2625 of 2003. It was pointed out to the trial court that on account of the breach of the terms and conditions of the utility agreement dated 2/3/2003, the defendants had issued a letter dated 16/5/2003 and taken over possession of the suit premises on that day itself. The Notice of Motion No.2625 of 2003 came to be decided by the trial court on 7/8/2003 and it was dismissed. In the said Notice of Motion the plaintiff had prayed for restraining order against the defendants from obstructing his possession of the suit premises on the basis of his claim that an amount of Rs.7,00,000/- was already paid by the plaintiff to the defendants in terms of the utility agreement and that

he had incurred expenditure upto Rs.36,00,000/- to renovate the suit premises and start a restaurant/hotel therein. In the said order the trial court held that Clause No.23 of the utility agreement automatically operated and it accepted the contentions of the defendants that on 16/5/2003 the plaintiff was dispossessed. After the ad-interim order was obtained by him on 11/7/2003, the plaintiff had entered the suit premises forcibly and claimed his possession by showing the ad-interim order. On the night of 14/7/2003 there was a party which went on till the midnight and at about 3 a.m. on 15/7/2003 the plaintiff along with his brother Hitesh Patel and other 20 to 25 persons forcibly entered in the suit hotel and threatened the staff as well as the security guards with dire consequences and then packed them in a vehicle and took them away to hotel midnight situate at Juhu Tara Road. They were all confined in one room and beaten up mercilessly, as was contended by the defendants. F.I.R. No.242 of 2003 came to be filed with the Andheri Police Station. These submissions made by the defendants were accepted by the trial court by recording a finding that as on the date the

plaintiff filed the suit he was not in possession of the suit premises and he recovered the possession of the suit premises on the basis of the ex-parte ad-interim order which was served on the defendants on 16/7/2003 for the first time.

6. The learned Judge of the court below relied upon the decision in the case of Hiralal Patni vs. Loonkaran Sethiya and ors. reported in **AIR 1962 SC 21** regarding the suit property to be retained in possession of the Court Receiver and more particularly the following observations:-

"If a receiver is appointed in a suit until judgment, the appointment is brought to an end by the judgment in the action. If a receiver is appointed in a suit without his tenure being expressly defined, he will continue to be receiver till he is discharged. But after the final disposal of the suit, as between the parties to the litigation, the receiver's functions are terminated, he would still be answerable to the court as its officer till he is finally discharged. The court has ample power to continue the receiver even after the final decree if the exigencies of the case so require."

6A. In the instant case it was the plaintiff who applied for withdrawal of the suit and while allowing the said motion, it was necessary for the court to restore the suit property to the court receiver more so because as on the date when the court receiver was appointed by the trial court, the plaintiff was not in possession of the suit property i.e. on 7/8/2003. Even in the earlier proceedings it was repeatedly noted by the court below that the plaintiff was not in possession of the suit property on the date he filed the suit and, therefore, the plaintiff could not retain the possession of the suit property as an agent of the court receiver, on his suit being allowed to be withdrawn. The impugned order is well reasoned and it does not suffer on any count. The challenge to the part of the order, i.e. regarding the possession of the suit property, is devoid of merits and, therefore, this appeal must fail at the threshold.

7. The appeal is hereby dismissed in limine. Ad-interim order stands vacated. Oral application for stay is hereby rejected.

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(B.H. Marlapalle, J.)